

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Interior Telephone Company, Inc.)	
)	
Petition for Declaratory Ruling on the)	WC Docket No. 07-102
Scope of the Duty of a Rural Local)	
Exchange Carrier to Provide Interim)	
Interconnection)	
_____)	

COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation (“Sprint Nextel”) files these comments in opposition to the Petition for Declaratory Ruling of Interior Telephone Company, Inc (“Interior”).¹ The *Interior Petition* is one more example of the many tactics incumbent local exchange carriers (“ILECs”) use to delay competitive market entry and undermine the original intent of the 1996 Telecommunications Act (the “Act”). The language of 47 C.F.R. §51.715 is straightforward and unambiguous. The Federal Communications Commission (“Commission”) should immediately reject the *Interior Petition* and emphasize that it will not tolerate further efforts to delay competitive entry.

I. THE LANGUAGE AND INTENT OF 51.715 IS UNAMBIGUOUS

The straight forward language of 47 C.F.R. §51.715 (the “Interim Interconnection Rule”) requires ILECs to allow new entrants the ability to exchange traffic with the incumbent LEC, even if the rates for the exchange of such traffic have not been resolved:

Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC *shall* provide transport and termination of telecommunications traffic *immediately* under an interim arrangement,

¹ Petition for Declaratory Ruling of Interior Telephone Company, Inc., WC Docket No. 07-102 (filed May 3, 2007)(“*Interior Petition*”), Public Notice released May 16, 2007, DA 07-2067.

pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act.²

The intent behind the rule is equally unambiguous. The Commission noted in its *Local Competition Order*, “[w]e are concerned that some new entrants that do not already have interconnection arrangements with incumbent LECs may face delays in *initiating service* solely because of the need to negotiate transport and termination arrangements with the incumbent LEC.”³ Accordingly, the Commission established this rule “to promote the Act’s goal of rapid competition.”⁴ By allowing new entrants to begin providing service in a market immediately under “interim” arrangements, the Commission encourages competitive entry while still ensuring that the procedures of 47 U.S.C. §§ 251 and 252 are applied.

Despite this straightforward language, Interior Telephone maintains that the rule only requires ILECs to “provide interim transport and termination *pricing*, and not interim *interconnection*.”⁵ Because it has agreed to a rate, Interior reasons, it does not have to permit interconnection or the actual exchange of traffic. Thus, according to Interior, the rule requires a competitive entrant to complete the negotiation and arbitration processes of §252 for *all* interconnection terms, not just price, before it may enter the local exchange carrier’s market, thus causing significant delay in market entry.⁶ Interior provides no language in the rule which supports this conclusion nor does it explain how it is consistent with the enacting language of the *Local Competition Order*. Interior also fails to answer the most basic question: Why would the

² 47 C.F.R. §51.715 (emphasis added).

³ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket 96-98, 11 FCC Rcd 15499, 16029 (1996), ¶ 1065 (“*Local Competition Order*”) (emphasis added).

⁴ *Id.*

⁵ *Interior Petition* at p. 4 (emphasis in original).

⁶ 47 U.S.C. §252(b)(4)(C) grants state commissions nine months from the date a request for interconnection is made to resolve all outstanding issues. As a practical reality, however, arbitrations are rarely completed within this time frame. Moreover, once an arbitration is completed, carriers are frequently directed to negotiate contract language consistent with the state commission’s decision and file this agreement for approval, a process which frequently takes several additional months.

Commission establish interim rates for the exchange of traffic (and a process for true-up) if the ILEC had no obligation to permit the exchange of traffic in the first place?

A. The Rule Is Not Limited to Pricing

Interior argues that the Commission’s discussion of this rule is contained within the pricing section of the *Local Competition Order* and accordingly could only be meant to extend to pricing issues and not to the general terms of interconnection.⁷ The Interim Interconnection Rule, however, is not simply a part of the pricing discussions of the *Local Competition Order*. The rule was created within Section XI of the *Local Competition Order* entitled, “Obligations Imposed on LECs by Section 251(b).” The first sentence of Section XI observes:

Section 251(b)(5) provides that all LECs, including incumbent LECs, have the duty to “establish reciprocal compensation arrangements for the transport and termination of telecommunications.”⁸

In implementing this general statutory duty, the Commission established numerous rules, only one of which was the Interim Interconnection rule. At the time the *Local Competition Order* was drafted, agreement on pricing was assumed to be the primary hurdle to establishing interconnection. Indeed, this belief is reflected in the general structure of the statute which focuses largely on the charges associated with interconnection. Neither Congress nor the Commission had foreseen the numerous and creative roadblocks to competition incumbent LECs would invent.

Interior argues that the Commission was only concerned that competitive entry would be delayed by “the fact that waiting for state commissions to establish default rates could take an extended period of time not subject to statutory constraint.”⁹ Again, Interior cites no authority

⁷ *Interior Petition* at p. 10.

⁸ *Local Competition Order* at ¶1027.

⁹ *Interior Petition* at p. 7.

for this position. Indeed, the section of the *Local Competition Order* Interior cites comes to the opposite conclusion:

A new entrant that has already constructed facilities may have a relatively weak bargaining position because it may be forced to choose either to accept transport and termination rates not in accord with these rules or *to delay its commencement of service until the conclusion of the arbitration and state approval process.*¹⁰

In other words, the Commission expresses its desire to avoid delays in competitive entry while the parties complete the “arbitration and state approval process” outlined in 47 U.S.C. §252 – the precise result that Interior advocates here.

B. The Rule Explicitly Addresses the Procedures of Sections 251 and 252

Interior argues that the rule could not require interim interconnection, as well as pricing, because the Act establishes timelines and procedures for the negotiation and arbitration of interconnection agreements.¹¹ The rule, however, expressly deals with this question. Indeed, the limitations on the rule make clear that the Commission was well aware of the importance of the §252 process and took affirmative steps to ensure that competitive entrants would be required to complete that process in order to take advantage of the rule.

The new entrant is only entitled to establish an interim arrangement if it has made a formal request for interconnection.¹² This formal request for interconnection, in turn, triggers the §252 arbitration process.¹³ The interim arrangement will last only until one of the following has been satisfied: (1) A voluntary agreement has been negotiated and approved by a state commission; (2) An agreement has been arbitrated and approved by a state commission; or (3)

¹⁰ *Id.*, citing the *Local Competition Order* at ¶ 1065 (emphasis added).

¹¹ *Interior Petition* at p. 12. Of course, the Act also establishes the same procedures for the negotiation and arbitration of pricing, but Interior apparently does not challenge this aspect of the Commission’s rule.

¹² 47 C.F.R. §51.715(a)(2).

¹³ 47 U.S.C. §252(a) and (b).

The period for requesting arbitration has passed with no such request.¹⁴ Thus, under the express terms of the rule, the competitive entrant must either reach agreement with the ILEC or complete the §252 arbitration process. If it fails to take these actions within the statutory period, its interim arrangement will expire.

The language of the rule is unequivocal. ILECs must make arrangements for the exchange of traffic while the arbitration process is completed. Interior can cite to no language which states otherwise. Instead, Interior argues from a selective use of “context” that the rule could not mean what it says. This is nothing more than a poorly disguised delay tactic that should be quickly dismissed by the Commission.

CONCLUSION

The Commission should immediately reject Interior’s attempt to circumvent the plain language of the rules and undermine the pro-competitive goals of the Act and the Commission.

Respectfully submitted,

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¹⁴ 47 C.F.R. §51.715(c); *Local Competition Order* at ¶1065.